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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 Vicki L Graham,

No. CV-23-08086-PCT-DJH

10 Plaintiff,

ORDER

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

15 Plaintiff Vicki L Graham (“Plaintiff”) seeks judicial review of the Social Security
16 Administration (“SSA”) Commissioner’s partially favorable decision finding Plaintiff
17 disabled as of December 9, 2017—but not earlier. (Doc. 1). Plaintiff filed her Opening
18 Brief (Doc. 1), the Commissioner filed a Response (Doc. 19), and Plaintiff filed a Reply
19 (Doc. 20). Upon review of the briefing and the Administrative Record (“AR”) (Doc. 8),
20 the Court affirms the Administrative Law Judge’s (“ALJ”) September 8, 2022, decision.
21 (AR at 9–4).

22 **I. Background**

23 On March 14, 2016, Plaintiff filed an application for social security disability
24 insurance (“SSDI”) benefits under Title II of the Act, alleging a disability onset date of
25 May 13, 2014. (*Id.* at 1696). She also filed a Title XVI application for supplemental
26 security income (“SSI”) on March 15, 2016. *Id.* Both applications listed the disability
27 onset date as May 13, 2016, which was later amended to November 15, 2014. *Id.* Initially,
28 both claims were denied on June 23, 2016, and denied again upon reconsideration on

1 November 4, 2016. *Id.* The Plaintiff then filed a complaint with the United States District
2 Court for the District of Arizona, and on January 31, 2022, the Court reversed the decision
3 of the Commissioner and remanded her case to the Commissioner for further proceedings.
4 (Doc. 17 at 3). After a hearing on August 12, 2022, the ALJ issued a partially favorable
5 decision finding that Plaintiff was disabled as of December 9, 2017, but not the alleged
6 date of May 13, 2014, that she had listed on her application. *Id.* Now, Plaintiff has filed
7 a Complaint with this Court for the second time. (Doc. 1).

8 Plaintiff claims several impairments to her ability to work resulting from a neck
9 injury and five surgeries. (AR at 53). The ALJ found that she had the following severe
10 impairments:

11 • cervical degenerative disc disease;
12 • thoracic and lumbar scoliosis;
13 • lumbar degenerative disc disease status-post C3/7 anterior fusion and C3/5 posterior
14 fusion;
15 • impingement syndrome of the right shoulder with labral tear;
16 • right deltoid muscle avulsion status post-surgical repair;
17 • right ulnar nerve impingement, and;
18 • bilateral carpal tunnel syndrome status/post release and revision.

19 (AR 1714). The Plaintiff was also found to suffer from severe migraines that constituted
20 a medically determinable impairment. (*Id.* at 1715). These impairments were found to
21 constitute more than slight abnormalities and to have more than a minimal effect on the
22 Plaintiff's ability to perform work. (*Id.*)

23 During her symptom testimony, Plaintiff stated that she feels constant chronic pain
24 that affected her daily activities because of her neck injury (a wine rack fell on the Plaintiff
25 in 2007) and subsequent surgeries. (AR at 1750). She also testified that she has migraines
26 and can only stand for twenty minutes at a time before she needs to lay down. (AR at
27 1750).

28 The ALJ, citing to medical records, found Plaintiff's symptom testimony was
consistent with medically determinable impairments, but that Plaintiff's claims about the

1 intensity, persistence, and limiting effects of these symptoms is “not entirely consistent
 2 with the medical evidence and other evidence in the record.” (AR at 1713). Ultimately,
 3 the ALJ found that, although Plaintiff is disabled, she was not disabled prior to December
 4 9, 2017. (*Id.*)

5 **II. Standard of Review**

6 In determining whether to reverse an ALJ’s decision, the district court reviews only
 7 those issues raised by the party challenging the decision. *See Lewis v. Apfel*, 236 F.3d 503,
 8 517 n.13 (9th Cir. 2001). The Court may set aside the Commissioner’s disability
 9 determination only if it is not supported by substantial evidence or is based on legal error.
 10 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). Substantial evidence is relevant evidence
 11 that a reasonable person might accept as adequate to support a conclusion considering the
 12 record as a whole. *Id.* To determine whether substantial evidence supports a decision, the
 13 Court must consider the record as a whole and may not affirm simply by isolating a
 14 “specific quantum of supporting evidence.” *Id.* Generally, “[w]here the evidence is
 15 susceptible to more than one Rational interpretation, one of which supports the ALJ’s
 16 decision, the ALJ’s conclusion must be upheld.” *Thomas v. Bernhart*, 287 F. 3d 947, 954
 17 (9th Cir. 2002) (citations omitted).

18 To determine whether a claimant is disabled for purposes of the Act, the ALJ
 19 follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears the burden of
 20 proof on the first four steps, but the burden shifts to the Commissioner at step five. *Tackett*
 21 *v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). At the first step, the ALJ determines whether
 22 the claimant is presently engaging in substantial gainful activity. 20 C.F.R. §
 23 404.1520(a)(4)(i). At step two, the ALJ determines whether the claimant has a “severe”
 24 medically determinable physical or mental impairment. 20 C.F.R. § 404.1520(a)(4)(ii). At
 25 step three, the ALJ considers whether the claimant’s impairment or combination of
 26 impairments meets or medically equals an impairment listed in Appendix 1 to Subpart P
 27 of 20 C.F.R. Part 404. 20 C.F.R. § 404.1520(a)(4)(iii). If so, the claimant is automatically
 28 found to be disabled. *Id.* At step four, the ALJ assesses the claimant’s residual functional

1 capacity and determines whether the claimant is still capable of performing past relevant
 2 work. 20 C.F.R. § 404.1520(a)(4)(iv). If not, the ALJ proceeds to the fifth and final step,
 3 where he determines whether the claimant can perform any other work in the national
 4 economy based on the claimant's residual functional capacity, age, education, and work
 5 experience. 20 C.F.R. § 404.1520(a)(4)(v). If the ALJ determines no such work is
 6 available, the claimant is disabled. *Id.*

7 **III. Discussion**

8 Plaintiff raises two issues issue: (1) whether the ALJ erred in rejecting Plaintiff's
 9 own symptom testimony and (2) whether he erred by rejecting multiple assessments by
 10 Plaintiff's treating spinal physician, Chad Hartley, in determining Plaintiff's onset of
 11 disability date. (Doc. 1 at 4). Upon review, the Court finds the ALJ did not err in rejecting
 12 Plaintiff's symptom testimony or assigning little weight to the treating physician's notes
 13 when assessing the onset of disability date.

14 **A. Plaintiff's Symptom Testimony**

15 Plaintiff first argues the ALJ erred when she rejected Plaintiff's symptom testimony.
 16 (Doc. 1 at 3). She did not.

17 When an ALJ evaluates a claimant's symptoms, he considers symptom testimony,
 18 objective medical evidence, and other evidence in the record. 20 C.F.R. § 404.1529(c).
 19 An ALJ "may not reject a claimant's subjective complaints based solely on a lack of
 20 objective medical evidence to fully corroborate the alleged severity of pain." *Bunnell v.*
 21 *Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991); *see also* 20 C.F.R. § 404.1529(c)(2). However,
 22 an ALJ may "reject the claimant's testimony about the severity of [the] symptoms"
 23 provided that the ALJ also explain his decision "by providing specific, clear, and
 24 convincing reasons for doing so." *Brown-Hunter v. Colvin*, 806 F.3d 487, 488–89 (9th Cir.
 25 2015).

26 Plaintiff first argues the ALJ erred when she rejected Plaintiff's symptom testimony
 27 because "the ALJ failed to identify anything specific in the record that was inconsistent
 28 with specific portions of Graham's symptom testimony." (Doc. 20 at 4). Under 20 C.F.R.

1 § 416.929(a), an ALJ is required to consider a claimant’s symptoms “and the extent to
 2 which [the] symptoms can reasonably be accepted as consistent with the objective medical
 3 evidence and other evidence” in the record. Based on her review, the ALJ found that the
 4 medical evidence from 2014-2017 “does not fully support the intensity, persistence, or
 5 limiting effects that the claimant ascribes to these impairments.” (AR at 1713).

6 Going one step further, the ALJ specifically focused on the Plaintiff’s post-
 7 laminectomy syndrome and degeneration of her cervical spine predating the alleged onset
 8 date of 2014. (*Id.*) The ALJ noted that Plaintiff underwent an anterior cervical discectomy
 9 and fusion surgery to C4 and C5 on June 24, 2015. (*Id.* at 1711). Another surgery on
 10 March 9, 2016, was done for the same thing but for C3 and C4. (*Id.*) And finally, the ALJ
 11 noted that Plaintiff underwent a third surgery in November of 2016 for C3/5 posterior
 12 fusion with bilateral arthrodesis at C3/4 and C4/5. (*Id.*) However, the ALJ found that
 13 following Plaintiff’s first surgery, her imaging “showed a stable C4/7 fusion with normal
 14 vertebral bodies.” (*Id.*) Similarly, following the second surgery, a myelogram “showed
 15 the fusion hardware appropriately in place” and “no significant canal or foraminal
 16 stenosis.” *Id.* The imaging following the third surgery also showed much of the same with
 17 “solid interbody fusion” and no “foraminal or canal stenosis.” *Id.* These findings run
 18 directly counter to Plaintiff’s claim that the ALJ did not consider her three surgeries and
 19 their impact on Plaintiff’s recovery. (Doc. 20 at 6).

20 Plaintiff also states that the ALJ “failed to consider the . . . abnormal findings on
 21 examinations that supported the Plaintiff’s symptom testimony.” (Doc. 20 at 5). This
 22 assertion fails because the ALJ acknowledged that “claimant’s cervical spine revealed a
 23 degree of abnormality.” (AR at 1711). Conversely, the ALJ also noted that these
 24 abnormalities were consistent with the Plaintiff’s spinal fusions. (*Id.*) Further, the ALJ
 25 found that the “imaging findings are not entirely consistent with the degree of radicular
 26 symptoms or pain that the claimant alleges.” (*Id.* at 1713). Several factors contributed to
 27 the ALJ’s decision that Plaintiff’s symptom testimony was not entirely accurate: claimant’s
 28 reports to medical providers and her own admission that she was more active than ever

1 after her November 2016 surgery. *Id.* Additionally, X-ray images showed normal
 2 decompression and Plaintiff denied that she had any difficulty in walking, climbing stairs,
 3 bathing, running errands, and reports from medical providers stated that Plaintiff was in no
 4 acute distress during the contested period from 2014–2017. (*Id.* at 1714.)

5 The ALJ also noted that a finding of “not disabled” was appropriate prior to
 6 December 9, 2017, based on the testimony of a vocational expert. (AR at 1722). Plaintiff
 7 was found to be in the younger individual age category and based on Plaintiff’s age,
 8 education, work experience and residual functional capacity, the vocational expert testified
 9 that jobs existed in significant numbers that the Plaintiff could have performed. (AR at
 10 1721; 20 CFR § 404.1563). The vocational expert also addressed Plaintiff’s limitations
 11 regarding “sit/stand options, directional reaching, positioning of the neck, restrictions to
 12 unilateral versus bilateral manipulations, types of climbing, time off task, and a need for
 13 extra breaks.” (AR at 1722). The ALJ also noted that beginning on December 9, 2017,
 14 Plaintiff’s age category changed and a finding of “disabled” was appropriate. (*Id.*)

15 The Court finds, based on the above, that the ALJ relied on specific, clear, and
 16 convincing reasons for finding that the Plaintiff was not disabled prior to December 9,
 17 2017. *See Brown-Hunter*, 806 F.3d at 488–89. Because substantial evidence supports the
 18 ALJ’s findings, the Court finds that the ALJ did not err by discounting Plaintiff’s symptom
 19 testimony. *See Orn*, 495 F.3d at 630.

20 B. Dr. Hartley’s Medical Opinion

21 Plaintiff next argues the ALJ improperly weighted the opinion of her treating spinal
 22 physician: Dr. Chad Hartley. (Doc. 1 at 4). She did not.

23 For claims filed before March 27, 2017, more weight is given to a treating source
 24 than the opinion of a doctor who did not treat the claimant. *See Coleman v. Saul*, 979 F.3d
 25 751,756 (9th Cir. 2020); *Garrison v. Colvin*, 759 F.3d 995, 1012 (2014); *Turner v. Comm’r
 26 of Soc. Sec. Admin.*, 613 F.3d 1217, 1222 (9th Cir. 2010). The ALJ can consider the quality
 27 of the medical opinion when determining how much weight to assign to it and is not
 28 required to accept medical opinions at face value. *Ford v. Saul*, 950 F.3d 1141, 1155

1 (2020). Thus, an ALJ can disregard a medical opinion that is brief, conclusory, and
2 inadequately supported by clinical findings. *Britton v. Colvin*, 787 F.3d 1011, 1012 (9th
3 Cir. 2015). To disregard such a treating physician's opinion, however, requires "specific
4 and legitimate reasons that are supported by substantial evidence." *Marsh v. Colvin*, 792
5 F.3d 1170, 1173 (9th Cir. 2015). "Where an ALJ does not explicitly reject a medical
6 opinion or set forth specific, legitimate reasons for crediting one medical opinion over
7 another, he errs." *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014).

8 Dr. Hartley, one of Plaintiff's treating spinal physicians, had three different opinions
9 based on his evaluations of the Plaintiff. (AR at 1719). He first opined in a report on
10 September 14, 2016, that Plaintiff "could sit for an hour at a time and 4 hours total in a
11 workday with frequent breaks to lie down, stand and walk for less than an hour at a time
12 and 3 hours total in a workday with frequent breaks to lie down, and occasionally lift and
13 carry up to 10 pounds." (AR at 1719). His next opined in a April 2, 2018, report that
14 Plaintiff "could sit for 30 minutes at a time and 2 hours in a workday, stand and walk for
15 30 minutes at a time and 2 hours in a workday, occasionally lift and carry up to 5 pounds,
16 and less than occasionally lift and carry up to 10 pounds." (*Id.*) His third and final report
17 issued on June 8, 2022, finds that Plaintiff was limited to "sitting for 30 minutes at a time
18 and 2 hours in a workday, standing and walking for 30 minutes at a time and 2 hours in a
19 workday, occasionally lifting and carrying up to 5 pounds, and rarely lifting and carrying
20 up to 10 pounds." (*Id.*) The ALJ also noted that Dr. Hartley performed Plaintiff's spinal
21 injuries. (*Id.*)

22 In analyzing Dr. Hartley's reports and notes, the ALJ found that Dr. Hartley "offered
23 minimal concrete explanations for the basis of his opinions." (*Id.*) She further noted that
24 "his treatment notes shed little light on how he came to these conclusions." (*Id.*)
25 Specifically, it was noted that although Dr. Hartley's first report was written on September
26 14, 2016, the last physical examination he performed on the Plaintiff prior to writing the
27 report, was three months earlier in May of 2016. (*Id.*) His physical examination revealed
28 no abnormalities and instead indicated normal posture, normal cranial nerve function,

1 normal sensation, normal gait, normal cervical range of motion, and normal sensation. (*Id.*)
2 The subsequent examinations he performed in November of 2016 and February of 2017
3 showed a normal thoracic and lumbar spine with full range of motion. (*Id.*) Indeed, the
4 ALJ noted that there were vast differences in the limitations noted by Dr. Hartley in his
5 three reports and yet, his opinions are not supported by his treatment records or the totality
6 of the record in general. (AR at 1720).

7 Based on these differing reports, the Court finds that the ALJ provided specific and
8 legitimate reasons based on substantial evidence in the record for not giving full weight to
9 Dr. Hartley's opinions and cited directly to these contradictory records. *See Marsh* 792
10 F.3d at 1173. So, the ALJ did not err in discounting Dr. Hartley's opinions—even though
11 he was Plaintiff's treating physician. *See id.*

12 **IV. Conclusion**

13 The Court finds the ALJ properly discounted Plaintiff's symptom testimony by
14 providing specific, clear, and convincing reasons supported by substantial evidence to
15 establish the date of onset of disability. *See Brown-Hunter*, 806 F.3d at 488–89. The Court
16 further finds the ALJ provided specific and legitimate reasons supported by substantial
17 evidence for affording little weight to Dr. Hartley's opinion. *See Marsh*, 792 F.3d at 1173.
18 Therefore, the Court finds that the ALJ did not err in his decision, which is based on
19 substantial evidence.

20 Accordingly,

21 **IT IS HEREBY ORDERED** that the September 8, 2022, decision of the ALJ (AR
22 at 1696) is **AFFIRMED**. The Clerk of Court is directed to enter judgment accordingly
23 and dismiss this action.

24 Dated this 30th day of September, 2024.

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26 
27 Honorable Diane J. Humetewa
28 United States District Judge